

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Reza SERAFAT	Confirmation No.: 3299
Application No.: 10/538,258	Examiner: Henry, Thomas Haynes
Filed: June 9, 2005	Group Art Unit: 3717

For: METHOD AND DEVICE FOR CONTINUING AN ELECTRONIC MULTI-
PLAYER GAME, IN CASE OF AN ABSENCE OF A PLAYER OF SAID
GAME

Commissioner for Patents
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is submitted in support of the Notice of Appeal dated November 15, 2010.

I. REAL PARTY IN INTEREST

Nokia Corporation is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any related appeals and interferences.

III. STATUS OF THE CLAIMS

Claims 1-10, 14, 16, 17, and 20-26 are pending in this Application, in which claims 11-13, 15, 18, and 19 have been canceled, and claims 1-10, 14, 16, 17, and 20-26 have been previously presented.

Claims 1-10, 14, 16, 17, and 20-26 were rejected in an Office Action dated July 14, 2010. It is from the rejection of claims 1-10, 14, 16, 17, and 20-26 on July 14, 2010, that this Appeal is taken.

IV. STATUS OF AMENDMENTS

No Amendment has been filed subsequent to the issuance of the Office Action on July 14, 2010.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The claimed invention addresses problems associated with continuing and simulating an electronic multi-player game. In particular, the claimed invention is directed to running on an apparatus of a first player a multi-player game application, and causing, at least in part, actions that result in reception of an indication that a second player of another apparatus taking part in said multi-player game is absent. In addition, the claimed invention is directed to continuing the game by the apparatus as the first player and as the second player, by at least simulating the participation of said second player who is actually absent.

Independent claim 1 recites:

1. A method comprising:

running on an apparatus of a first player a multi-player game application (See, e.g., Specification, page 3, lines 1-6, page 8, lines 23-27, FIGS. 2 and 3), causing, at least in part, by the apparatus actions that result in reception of an indication that a second player of another apparatus taking part in said multi-player game is absent (See, e.g., Specification, page 5, lines 22-26, page 7, lines 16-28, page 8, line 29 – page 9, line 5, FIGS. 2 and 3), and continuing the game by the apparatus as the first player and as the second player, by at least simulating the participation of said second player who is actually absent (See, e.g., Specification, page 3, lines 19-37, page 4, lines 13-30, page 7, lines 24-28, page 8, line 29 – page 9, line 5, page 11, line 29 – page 12, line 1, page 14, lines 19-31, FIGS. 2 and 3).

Independent claim 10 recites:

10. A computer readable storage medium carrying one or more sequences of one or more instructions which, when executed by one or more processors, cause an apparatus to at least perform the following steps:

running a multi-player game application as a first player (See, e.g., Specification, page 3, lines 1-6, page 8, lines 23-27, FIGS. 2 and 3);

causing, at least in part, actions that result in reception of an indication that a second player of another apparatus taking part in said multi-player game is absent (See, e.g., Specification, page 5, lines 22-26, page 7, lines 16-28, page 8, line 29 – page 9, line 5, FIGS. 2 and 3); and

continuing the game as the first player and as the second player, by at least simulating the participation of said second player who is actually absent (See, e.g., Specification, page 3,

lines 19-37, page 4, lines 13-30, page 7, lines 24-28, page 8, line 29 – page 9, line 5, page 11, line 29 – page 12, line 1, page 14, lines 19-31, FIGS. 2 and 3).

Independent claim 14 recites:

14. An apparatus comprising:

at least one processor (See, e.g., Specification, page 3, lines 1-6, page 6, line 35 – page 7, line 2, page 8, lines 23-27, page 16, line 17 – page 17, line 2, FIGS. 2-4) ; and

at least one memory including computer program code (See, e.g., Specification, page 3, lines 1-6, page 8, lines 23-27, FIGS. 2 and 3),

the at least one memory and the computer program code configured to, with the at least one processor, cause the apparatus to perform at least the following,

run a multi-player game application as a first player (See, e.g., Specification, page 3, lines 1-6, page 8, lines 23-27, FIGS. 2 and 3);

cause, at least in part, actions that result in reception of an indication that a second player of another apparatus taking part in said multi-player game is absent (See, e.g., Specification, page 5, lines 22-26, page 7, lines 16-28, page 8, line 29 – page 9, line 5, FIGS. 2 and 3); and

continue the game as the first player and as the second player, by at least simulating the participation of said second player who is actually absent (See, e.g., Specification, page 3, lines 19-37, page 4, lines 13-30, page 7, lines 24-28, page 8, line 29 – page 9, line 5, page 11, line 29 – page 12, line 1, page 14, lines 19-31, FIGS. 2 and 3).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 2, 6, 7, 9, 10, 14, 17, 18, 20, and 23 were rejected under 35 U.S.C. §102(b) for anticipation predicated upon a video game titled “Unreal Tournament 2003” (“*Unreal Tournament*”) “as evidenced by” a publication entitled “Unreal Tournament 2003 PC Manual” (“*PC Manual*”) and an online article available at <http://theadminpage.planetunreal.gamespy.com/Non-DedicatedLAN.htm> by MutantKiller entitled “*The Cable/DSL/T1 Server*” (“*MutantKiller*”) (as extrinsic evidence).

B. Claims 3-5 and 26 were rejected under 35 U.S.C. §103(a) for obviousness predicated upon *Unreal Tournament* in view of Begis (US 6,024,643, “*Begis*”).

C. Claims 8, 16, 21, 22, 24, and 25 were rejected under 35 U.S.C. §103(a) for obviousness predicated upon *Unreal Tournament*.

VII. ARGUMENT**A. CLAIMS 1, 2, 6, 7, 9, 10, 14, 17, 18, 20, AND 23 ARE NOT ANTICIPATED BY UNREAL TOURNAMENT**

The Examiner bears the initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention under any statutory provision. *Gilbert & P. Hyatt v. Dudas*, 551 F.3d 1307, 1313 (Fed. Cir. 2008); *In re Glaug*, 283 F.3d 1335 (Fed. Cir. 2002); *In re Rijkaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1992); *In re Oetiker*, 977 F.2d 1992); *In re Piasecki*, 745 F.2d 1468 (Fed. Cir. 1984). To anticipate a patent claim, the identical disclosure in a single reference of each element of a claimed invention, as those elements are set forth in the claims, such that the claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Therasense Inc. v. Becton, Dickinson and Co.*, 593 F3d 1325 (Fed. Cir. 2010); *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1308, (Fed. Cir. 2008); *Dayco Prods., Inc. v. Total*

Containment, Inc., 329 F.3d 1358 (Fed. Cir. 2003); *Schering Corp. v. Geneva Pharm.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003), *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367 (Fed. Cir. 2002); *Candt Tech Ltd. v. Resco Metal & Plastics Corp.*, 264 F.3d 1344 (Fed. Cir. 2001).

Additionally, “[u]nless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations **arranged or combined in the same way** as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102” (*see, Id. Therasense* quoting *Net moneyIN, Inc. v. VeriSign, Inc.*, 535 F.3d 1359 (Fed. Cir. 2008)) (emphasis added).

Although “inherent disclosure” is also a basis of anticipation, (*see, Finnigan Corp. v. Int’l Trade Comm’n*, 180 F.3d 1354, 1365 (Fed. Cir. 1999)), it “does not alter the requirement that all elements must be disclosed in an anticipatory reference in the same way they are arranged or combined in the claim” (*see, Id. Therasense*.). “[A]nticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation.”” (*see, Id.* quoting *Transclean Corp. v. Bridgewood Servs., Inc.*, 290 F.3d 1364, 1373 (Fed. Cir. 2002)). “Inherency, however, **may not be established by probabilities or possibilities**. The mere fact that a certain thing may result from a given set of circumstances is not sufficient”” (*see, Id.* quoting *In re Oelrich*, 666 F.ed 578, 581 (CCPA 1981)) (emphasis added).

Independent claim 1 recites, *inter alia*, “**continuing the game** by the apparatus as the first player and as the second player, **by at least simulating the participation of said second player** who is actually absent.” Independent claim 10 recites, *inter alia*, “**continuing the game** as the first player and as the second player, **by at least simulating the participation of said second**

player who is actually absent.” Independent claim 14 recites, *inter alia*, “**continue the game** as the first player and as the second player, **by at least simulating the participation of said second player** who is actually absent.”

The Office Action, on pages 2 and 3, asserts that *Unreal Tournament* discloses the above recited features and cites page 9 of *PC Manual* and page 5 of *MutantKiller* in support of this assertion. Appellant respectfully disagrees with the Office Action’s assertions. The Office Action’s assertions, in pertinent part, are reproduced below for ease of reference (emphasis added):

You can set a minimum number of players such that if a player drops out of a multi-player match, and the total number of players falls below the minimum number, **the player is replaced with a bot**. A bot simulates the participation of a player in that it attempts to get killed.

Further, page 9 of *PC Manual* simply discloses that in a multiplayer scenario, a maximum and minimum number of players may be set. Moreover, page 5 of *MutantKiller*, in pertinent part, discloses (emphasis added):

“Min. Total Players” this is the minimum number of player (Human and BOTS) that will be maintained in the game. If the Human Player count drops below this **then the BOTS will come in to keep the number at the minimum**. As Human players enter the game, the BOTS will leave.

Appellant respectfully submits that replacing an absent player with a BOT does not correspond to **simulating the participation** of a second player of another apparatus who is actually absent. At best, *PC Manual* and *MutantKiller* only suggest maintaining the minimum number of players by replacing an absent player with a BOT. However, neither *PC Manual* nor *MutantKiller* remotely disclose that any absent player’s participation is simulated. That is, maintaining a minimum number of players of a game by replacing a player who has left the game

with an added BOT, as described by *MutantKiller*, does not explicitly or inherently require simulating the participation of the player who left the game. Thus, *Unreal Tournament*, as evidenced by *PC Manual* and *MutantKiller*, cannot reasonably be considered as disclosing “**continuing the game** by the apparatus as the first player and as the second player, **by at least simulating the participation of said second player** who is actually absent,” as recited in independent claim 1, and as similarly recited in independent claims 10 and 14.

Since the factual determination of lack of novelty under 35 U.S.C. § 102 requires the **identical disclosure** in a single reference of **each element** of a claim, such that the **identically disclosed subject matter** is placed into the recognized possession of one having ordinary skill in the art, *Wu* ‘646 fails to anticipate the claimed subject matter. *See, e.g., Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1308, (Fed. Cir. 2008); *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358 (Fed. Cir. 2003); *Trintec Indus., Inc. v. Top U.S.A. Corp.*, 295 F.3d 1292, 1296-97 (Fed. Cir. 2002) (noting that **the standard is strict, requiring exact correspondence** between the contents of the applied reference and the claimed elements, such that each and every element recited in the claims is present in the allegedly anticipatory reference); *Crown Operations Int'l, Ltd. v. Solutia Inc.*, 289 F.3d 1367 (Fed. Cir. 2002).

Therefore, *Unreal Tournament*, as evidenced by *PC Manual* and *MutantKiller*, clearly cannot anticipate the instant claimed subject matter of independent claims 1, 10, and 14, as well as dependent claims 2, 6, 7, 9, 17, 18, 20, and 23, under 35 U.S.C. § 102(b). Thus, the Examiner has committed clear error in holding these claims anticipated by *Unreal Tournament*.

Accordingly, since the Examiner has erred in failing to present a *prima facie* case of anticipation with regard to the subject matter of claims 1, 2, 6, 7, 9, 10, 14, 17, 18, 20, and 23, the rejection of these claims under 35 U.S.C. 102(b) is neither legally nor factually viable. Hence,

the rejection of independent claims 1, 10, and 14, and dependent claims 2, 6, 7, 9, 17, 18, 20, and 23 must be reversed, because *Unreal Tournament*, as evidenced by *PC Manual* and *MutantKiller*, does not disclose, or even suggest, all of the features of these claims. Accordingly, reversal of this rejection by the Honorable Board is respectfully solicited.

B. CLAIMS 3-5 AND 26 ARE NOT RENDERED OBVIOUS BY UNREAL TOURNAMENT AND BEGIS

As stated above, the Examiner bears the initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention under any statutory provision.

With respect to the 35 U.S.C. § 103(a) rejection of dependent claims 3-5 and 26, *Begis* fails to at least remedy the above discussed deficiencies of *Unreal Tournament*. Therefore, claims 3-5 and 26 also are patentable over *Unreal Tournament*, for at least the reasons independent claims 1 and 10 are patentable, from which these claims variously depend, as well as for the additional features these claims recite. Even if, for the sake of argument, the applied references are combined as proposed by the Examiner, and Appellant does not agree that the requisite basis for the asserted motivation has been established, the features recited in dependent claims 3-5 and 26 would not result.

Thus, the imposed rejection of dependent claims 3-5 and 26 under 35 U.S.C. §103(a) for obviousness based on *Unreal Tournament* and *Begis* is not factually or legally viable. Hence, the rejection of claims dependent claims 3-5 and 26 must be reversed, because *Unreal Tournament* and *Begis* do not disclose or render obvious all of the features of these claims. Accordingly, reversal of this rejection by the Honorable Board is respectfully solicited.

C. CLAIMS 8, 16, 21, 22, 24, AND 25 ARE NOT RENDERED OBVIOUS BY UNREAL TOURNAMENT

With respect to the 35 U.S.C. § 103(a) rejection of dependent claims 8, 16, 21, 22, 24, and 25, Appellant respectfully submits that the features of these claims are not rendered obvious by *Unreal Tournament*. Therefore, claims 8, 16, 21, 22, 24, and 25 also are patentable over *Unreal Tournament*, for at least the reasons independent claims 1 and 14 are patentable, from which these claims variously depend, as well as for the additional features these claims recite.

Thus, the imposed rejection of dependent claims 8, 16, 21, 22, 24, and 25 under 35 U.S.C. § 103(a) for obviousness based on *Unreal Tournament* is not factually or legally viable. Hence, the rejection of claims dependent claims 8, 16, 21, 22, 24, and 25 must be reversed, because *Unreal Tournament* do not disclose or render obvious the features of these claims. Accordingly, reversal of this rejection by the Honorable Board is respectfully solicited.

VIII. CONCLUSION AND PRAYER FOR RELIEF

Based on the foregoing, it is apparent that none of the Examiner's rejections under 35 U.S.C. §§ 102(b) and 103(a) is factually or legally viable. Appellant therefore solicits the Honorable Board to reverse each of the Examiner's rejections.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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March 15, 2011
Date

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IX. CLAIMS APPENDIX

1. A method comprising:

running on an apparatus of a first player a multi-player game application, causing, at least in part, by the apparatus actions that result in reception of an indication that a second player of another apparatus taking part in said multi-player game is absent, and continuing the game by the apparatus as the first player and as the second player, by at least simulating the participation of said second player who is actually absent.

2. The method according to claim 1, wherein said multi-player game is a network based multi-player game.

3. The method according to claim 1, further comprising:

monitoring by the apparatus the inputs of at least one player of said multi-player game, analyzing by the apparatus said inputs to determine gaming characteristics of said at least one monitored player, said gaming characteristics including one or more preferred key input combinations, and

simulating by the apparatus the participation of said monitored player who becomes absent in correspondence with said determined gaming characteristics.

4. The method according to claim 3, further comprising simulating said game and a result of said simulated game based on said determined gaming characteristics of said absent player; and while the game is going on, displaying the rest of the game as simulated at a speed faster than the actual game.

5. The method according to claim 3, further comprising transferring said determined gaming characteristics to another gaming device.

6. The method according to claim 1, wherein said indication that a player is absent comprises a notification received from said absent player.

7. The method according to claim 1, further comprising sending a notification to at least one of said other players of said multi-player game, said notification comprising an information that the participation of at least one player is actually simulated.

8. The method according to claim 1, further comprising the interruption of said game, if all players are absent.

9. The method according to claim 1, further comprising terminating by the apparatus said simulation of the participation, if said absent player returns to the game.

10. A computer readable storage medium carrying one or more sequences of one or more instructions which, when executed by one or more processors, cause an apparatus to at least perform the following steps:

running a multi-player game application as a first player;
causing, at least in part, actions that result in reception of an indication that a second player of another apparatus taking part in said multi-player game is absent; and
continuing the game as the first player and as the second player, by at least simulating the participation of said second player who is actually absent.

11. - 13. (Canceled)

14. An apparatus comprising:
at least one processor; and
at least one memory including computer program code,

the at least one memory and the computer program code configured to, with the at least one processor, cause the apparatus to perform at least the following, run a multi-player game application as a first player; cause, at least in part, actions that result in reception of an indication that a second player of another apparatus taking part in said multi-player game is absent; and continue the game as the first player and as the second player, by at least simulating the participation of said second player who is actually absent.

15. (Canceled)

16. The apparatus according to claim 14, wherein the apparatus and the another apparatus are mobile terminals, the second player becomes absent due to wireless disconnection of the another apparatus, and the multi player game application does not involves a central game server.

17. The apparatus according to claim 14, wherein the apparatus comprises an artificial intelligence engine.

18. - 19. (Canceled)

20. The apparatus according to claim 14, wherein the apparatus is caused to activate a failsafe option to continue the game when the first player becomes unavailable

21. The apparatus according to claim 20, wherein the apparatus is a mobile terminal, and the first player becomes unavailable for at least one of an incoming call or an incoming message.

22. The apparatus according to claim 21, wherein whether the first player will become unavailable depends upon at least one of a source of the at least one of an incoming call or an incoming message, nature of the game, and a type of the mobile terminal.

23. The method according to claim 1, further comprising activating a failsafe option to continue the game when the first player becomes unavailable.

24. The method according to claim 23, wherein the apparatus is a mobile terminal, and the first player becomes unavailable for at least one of an incoming call or an incoming message.

25. The method according to claim 24, wherein whether the first player will become unavailable depends upon at least one of a source of the at least one of an incoming call or an incoming message, nature of the game, and a type of the mobile terminal.

26. A computer readable storage medium according to claim 10, wherein the apparatus is caused to further perform:

monitoring the inputs of at least one player of said multi-player game,
analyzing said inputs to determine gaming characteristics of said at least one monitored player, said gaming characteristics including one or more preferred key input combinations, and
simulating the participation of said monitored player who becomes absent in correspondence with said determined gaming characteristics.

X. EVIDENCE APPENDIX

Appellant is unaware of any evidence that is required to be submitted in the present Evidence Appendix.

XI. RELATED PROCEEDINGS APPENDIX

Appellant is unaware of any related proceedings that are required to be submitted in the present Related Proceedings Appendix.